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9 JERZY KOSLA and CELINA KOSLA, husband and
wife as joint tenants, d/b/a/ Travelodge Ambassador Strip Inn

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11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF NEVADA**

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14 ACCESS 4 ALL, INC., a Florida not for profit
15 corporation, and PETER SPALLUTO, an
individual,

16 Plaintiffs,

17 v.

18 JERZY KOSLA and CELINA KOSLA, husband
19 and wife as joint tenants, d/b/a Travelodge
Ambassador Strip Inn,

20 Defendants.
21

CASE NO. 2:06-cv-1378

E-FILE

**ANSWER TO COMPLAINT ON
BEHALF OF DEFENDANTS JERZY
KOSLA and CELINA KOSLA,
HUSBAND AND WIFE AS JOINT
TENANTS, D/B/A/ TRAVELODGE
AMBASSADOR STRIP INN**

22 Defendants JERZY KOSLA and CELINA KOSLA, husband and wife as joint
23 tenants, d/b/a Travelodge Ambassador Strip Inn (hereinafter "Defendants") by and through their
24 attorneys of record, STEVEN A. GIBSON and SHERI M. SCHWARTZ, of the law firm LEWIS
25 BRISBOIS BISGAARD & SMITH LLP, hereby submit their Answer to Plaintiffs' Complaint as
26 follows:

27 1. Answering Paragraph 1 of Plaintiffs' Complaint, Defendants
28 state that they are without sufficient knowledge as to the truth of the allegations contained therein,

1 and therefore deny those allegations in their entirety.

2 2. Answering Paragraph 2 of Plaintiffs' Complaint, Defendants
3 state that they are without sufficient knowledge as to the truth of the allegations contained therein,
4 and therefore deny those allegations in their entirety.

5 3. Answering Paragraph 3 of Plaintiffs' Complaint, Defendants admit that the
6 Travelodge Ambassador Strip Inn is located at 5075 Koval Lane, Las Vegas, Nevada 89119, in the
7 County of Clark.

8 4. Answering Paragraph 4 of Plaintiffs' Complaint, Defendants admit that
9 venue is proper in the District of Nevada and that the Travelodge Ambassador Strip Inn is located
10 in and does business within this judicial district.

11 5. Answering Paragraph 5 of Plaintiffs' Complaint, Defendants admit that this
12 Court has jurisdiction over this action. Defendants deny the remaining allegations of this
13 paragraph.

14 6. Answering Paragraph 6 of Plaintiffs' Complaint, Defendants
15 state that they are without sufficient knowledge as to the truth of the allegations contained therein,
16 and therefore deny those allegations in their entirety.

17 7. Answering Paragraph 7 of Plaintiffs' Complaint, Defendants
18 state that they are without sufficient knowledge as to the truth of the allegations contained therein,
19 and therefore deny those allegations in their entirety.

20 8. Answering Paragraph 8 of Plaintiffs' Complaint, Defendants admit that they
21 own and operate the Travelodge Ambassador Strip Inn at 5075 Koval Lane, Las Vegas, Nevada
22 89119. Defendants also admit that the Travelodge is a place of public accommodation under the
23 ADA. As to the remaining allegations of said Paragraph, those allegations constitute legal
24 conclusions to which Defendants are not obligated to respond. To the extent such allegations
25 charge Defendants with violating the ADA, Defendants deny those allegations.

26 9. Answering Paragraph 9 of Plaintiffs' Complaint, Defendants deny said
27 allegations.

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10. Answering Paragraph 10 of Plaintiffs' Complaint, Defendants deny said allegations.

11. Answering Paragraph 11 of Plaintiffs' Complaint, Defendants deny the allegations contained in said paragraph. As to the subparagraphs set forth in Plaintiffs' Complaint, Defendants respond as follows:

Parking and Passenger Loading

12. Answering Paragraph A of this subsection of Paragraph 11 of Plaintiffs' Complaint, Defendants state that they have not completed their investigation of this matter. As a result, they are without sufficient knowledge as to the truth of the allegations contained therein, and therefore deny those allegations in their entirety.

13. Answering Paragraph B of this subsection of Paragraph 11 of Plaintiffs' Complaint, Defendants state that they have not completed their investigation of this matter. As a result, they are without sufficient knowledge as to the truth of the allegations contained therein, and therefore deny those allegations in their entirety.

14. Answering Paragraph C of this subsection of Paragraph 11 of Plaintiffs' Complaint, Defendants state that they have not completed their investigation of this matter. As a result, they are without sufficient knowledge as to the truth of the allegations contained therein, and therefore deny those allegations in their entirety.

Accessible Routes

15. Answering Paragraph A of this subsection of Paragraph 11 of Plaintiffs' Complaint, Defendants state that they have not completed their investigation of this matter. As a result, they are without sufficient knowledge as to the truth of the allegations contained therein, and therefore deny those allegations in their entirety.

16. Answering Paragraph B of this subsection of Paragraph 11 of Plaintiffs' Complaint, Defendants state that they have not completed their investigation of this matter. As a result, they are without sufficient knowledge as to the truth of the allegations contained therein, and therefore deny those allegations in their entirety.

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1 17. Answering Paragraph C of this subsection of Paragraph 11 of Plaintiffs'
2 Complaint, Defendants state that they have not completed their investigation of this matter. As a
3 result, they are without sufficient knowledge as to the truth of the allegations contained therein,
4 and therefore deny those allegations in their entirety.

5 Access to Goods and Services

6 18. Answering Paragraph A of this subsection of Paragraph 11 of Plaintiffs'
7 Complaint, Defendants state that they have not completed their investigation of this matter. As a
8 result, they are without sufficient knowledge as to the truth of the allegations contained therein,
9 and therefore deny those allegations in their entirety.

10 Accessible Guest Rooms

11 19. Answering Paragraph A of this subsection of Paragraph 11 of Plaintiffs'
12 Complaint, Defendants state that they have not completed their investigation of this matter. As a
13 result, they are without sufficient knowledge as to the truth of the allegations contained therein,
14 and therefore deny those allegations in their entirety.

15 20. Answering Paragraph B of this subsection of Paragraph 11 of Plaintiffs'
16 Complaint, Defendants deny the allegations of this paragraph.

17 21. Answering Paragraph C of this subsection of Paragraph 11 of Plaintiffs'
18 Complaint, Defendants state that they have not completed their investigation of this matter. As a
19 result, they are without sufficient knowledge as to the truth of the allegations contained therein,
20 and therefore deny those allegations in their entirety.

21 22. Answering Paragraph D of this subsection of Paragraph 11 of Plaintiffs'
22 Complaint, Defendants state that they have not completed their investigation of this matter. As a
23 result, they are without sufficient knowledge as to the truth of the allegations contained therein,
24 and therefore deny those allegations in their entirety.

25 23. Answering Paragraph E of this subsection of Paragraph 11 of Plaintiffs'
26 Complaint, Defendants state that they have not completed their investigation of this matter. As a
27 result, they are without sufficient knowledge as to the truth of the allegations contained therein,
28 and therefore deny those allegations in their entirety.

1 24. Answering Paragraph F of this subsection of Paragraph 11 of Plaintiffs'
2 Complaint, Defendants state that they have not completed their investigation of this matter. As a
3 result, they are without sufficient knowledge as to the truth of the allegations contained therein,
4 and therefore deny those allegations in their entirety.

5 25. Answering Paragraph G of this subsection of Paragraph 11 of Plaintiffs'
6 Complaint, Defendants state that they have not completed their investigation of this matter. As a
7 result, they are without sufficient knowledge as to the truth of the allegations contained therein,
8 and therefore deny those allegations in their entirety.

9 26. Answering Paragraph H of this subsection of Paragraph 11 of Plaintiffs'
10 Complaint, Defendants state that they have not completed their investigation of this matter. As a
11 result, they are without sufficient knowledge as to the truth of the allegations contained therein,
12 and therefore deny those allegations in their entirety.

13 27. Answering Paragraph I of this subsection of Paragraph 11 of Plaintiffs'
14 Complaint, Defendants state that they have not completed their investigation of this matter. As a
15 result, they are without sufficient knowledge as to the truth of the allegations contained therein,
16 and therefore deny those allegations in their entirety.

17 28. Answering Paragraph 12 of Plaintiffs' Complaint, Defendants deny the
18 allegations of said paragraph.

19 29. Answering Paragraph 13 of Plaintiffs' Complaint, Defendants deny the
20 allegations of said paragraph.

21 30. Answering Paragraph 14 of Plaintiffs' Complaint, Defendants deny the
22 allegations of said paragraph.

23 31. Answering Paragraph 15 of Plaintiffs' Complaint, Defendants state that
24 Plaintiffs' allegations consist of legal conclusions to which no response is required. To the extent
25 such allegations charge Defendants with violating the ADA, Defendants deny those allegations.

26 32. Answering Paragraph 16 of Plaintiffs' Complaint, Defendants deny the
27 allegations of said paragraph.

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33. Answering Paragraph 17 of Plaintiffs' Complaint, Defendants state that Plaintiffs' allegations consist of legal conclusions to which no response is required. To the extent such allegations charge Defendants with violating the ADA, Defendants deny those allegations.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Lack of Standing)

Plaintiffs lack standing to assert a claim under the ADA because Plaintiffs have not suffered a threatened or actual distinct and palpable injury, there is no causal connection between the injury and Defendants' challenged conduct, and/or there is no substantial likelihood that the relief sought by Plaintiffs will prevent or redress the injury.

SECOND AFFIRMATIVE DEFENSE

(Premises Constructed Prior to Effective Date of Title III of ADA)

The premises owned by these Defendants was designed and constructed for first occupancy prior to January 26, 1992. 34 Code Fed. Regs. §§ 36.401(a)(2) and 36.152.

THIRD AFFIRMATIVE DEFENSE

(No Reasonable Modifications)

The modifications set forth in Plaintiffs' Complaint are not "reasonable modifications" in the policies, practices, or procedures to the extent necessary to afford foods, services, facilities, privileges, advantages, or accommodations to Plaintiffs because such modifications would injure the financial operations and/or effectiveness of Defendants' services and facility. *See* 42 U.S.C. § 12.182(b)(2)(A)(ii)(1994).

FOURTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

Plaintiffs' claims as contained in the Complaint are barred by the applicable statutes of limitation.

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FIFTH AFFIRMATIVE DEFENSE

(Provision of Access through Alternative Methods)

Defendants provide persons with disabilities alternatives to barrier removal by providing access to merchandise by alternative methods such as customer services and sales assistance.

SIXTH AFFIRMATIVE DEFENSE

(Failure to State Claim)

The Complaint fails to state facts sufficient to constitute a cause of action against these answering Defendants.

SEVENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

Plaintiff has failed to act reasonably to mitigate any damages that he has alleged in this action.

EIGHTH AFFIRMATIVE DEFENSE

(Not Readily Achievable)

Some or all of the barrier removal proposed by Plaintiffs are not readily achievable.

NINTH AFFIRMATIVE DEFENSE

(Waiver)

Plaintiffs have waived any claims they may have against these responding Defendants arising from the transactions and occurrences set forth in the Complaint.

TENTH AFFIRMATIVE DEFENSE

(Estoppel)

Plaintiffs are estopped by their own conduct from asserting any and all claims they may have against these responding Defendants arising from the transactions and occurrences set forth in the Complaint.

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ELEVENTH AFFIRMATIVE DEFENSE

(Defendants' Conduct Was Not Arbitrary)

Defendants' activities with respect to Plaintiffs, if any, were privileged or otherwise justified, as such activities were proper, fair and legitimate business activities and/or business related reasons and were neither arbitrary, capricious, nor unlawful, but were undertaken to protect Defendants' economic interest and/or relations.

TWELFTH AFFIRMATIVE DEFENSE

(Defendants' Conduct Was Not Intentional)

The discriminatory conduct alleged by Plaintiffs, if proved, was not intentional.

THIRTEENTH AFFIRMATIVE DEFENSE

(No Proximate Cause)

Any acts or omissions to act by Defendants were not the proximate cause of any injury suffered by Plaintiffs.

FOURTEENTH AFFIRMATIVE DEFENSE

(No Basis For Attorneys' Fees)

Pursuant to *Jerry Doran v. Del Taco, Inc.*, 373 F.Supp.2d 1028 (C.D. Cal. 2005), Plaintiffs are not entitled to recover attorneys' fees or costs, as they failed to allow Defendants an opportunity to remediate any barriers alleged to exist at the subject facility.

FIFTEENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

The Complaint is barred by the doctrine of unclean hands.

SIXTEENTH AFFIRMATIVE DEFENSE

(Isolated and/or Temporary Interruptions)

Defendants were privileged and or justified for the alleged conduct, if any, because the alleged barriers were isolated and/or temporary interruptions in service or access due to maintenance and/or repairs.

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SEVENTEENTH AFFIRMATIVE DEFENSE

**(Premises Were Not Altered or Modified After the
Effective Date of Title III of ADA)**

The premises owned by Defendants was not altered or modified after January 26, 1992. 14 U.S.C. § 12183(a); 34 Code Fed. Regs. § 36.402.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Unknown Defenses)

Answering Defendants allege that they may have other separate and/or additional defenses of which they are not aware and hereby reserve the right to assert them by amendment to this Answer as discovery continues.

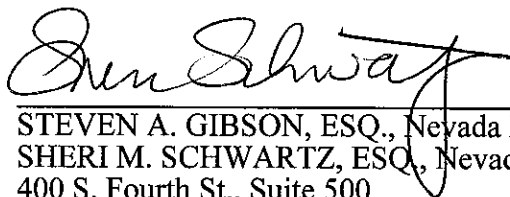
WHEREFORE, these Defendants pray for judgment as follows:

1. That Plaintiffs take nothing by reason of the Complaint on file herein;
2. For fees and costs of suit incurred herein; and
3. For such other and further relief as the Court deems just and proper.

Dated this 13 day of February, 2007

LEWIS BRISBOIS BISGAARD & SMITH LLP

By



STEVEN A. GIBSON, ESQ., Nevada Bar No. 6656
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Las Vegas, Nevada 89101
Attorneys for Defendants JERZY KOSLA and CELINA
KOSLA, husband and wife as joint tenants, d/b/a/ Travelodge
Ambassador Strip Inn

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of LEWIS, BRISBOIS
BISGAARD & SMITH, LLP and that on this 12th day of February, 2007, I did cause a true copy
of **ANSWER TO COMPLAINT ON BEHALF OF DEFENDANTS JERZY KOSLA and
CELINA KOSLA, HUSBAND AND WIFE AS JOINT TENANTS, D/B/A/ TRAVELODGE
AMBASSADOR STRIP INN** to be placed in the United States Mail, with first class postage
prepaid thereon, and addressed as follows:

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